

AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND
<<CONSULTANT_NAME>>
FOR
AERIAL SURVEY FOR <<PROJECT_TITLE>>

CONTRACT NUMBER: <<CONTRACT_NUMBER>>

TABLE OF CONTENTS

Commented [FAR1]: Note to Project Manager or Individual Preparing Document: If the page numbers in the table of contents need to be changed or corrected please contact John Mendivil (619-533-3638) for instructions on how to update this section. Do **not** change the page numbers manually because this action will disable the formatting of the entire Table of Contents.

ARTICLE I CONSULTANT SERVICES

1.1	Scope of Services	1
1.2	Competitive Bidding.....	1

ARTICLE II DURATION OF AGREEMENT

2.1	Term of Agreement	1
2.2	Time of Essence	1
2.3	City's Right to Terminate for Convenience.....	1
2.4	City's Right to Terminate for Default	2

ARTICLE III COMPENSATION

3.1	Amount of Compensation.....	2
3.2	Additional Services.....	2
3.3	Manner of Payment.....	2
3.4	Eighty Percent Notification	2

ARTICLE IV CONSULTANT'S OBLIGATIONS

4.1	Industry Standards.....	3
4.2	Maintenance of Records	3
4.3	Insurance	3
4.4	Drug-Free Workplace.....	6
4.5	Non-Discrimination Requirements.....	6
4.6	Conflict of Interest	7
4.7	Prevailing Wage Rates.....	7

ARTICLE V RESERVED

ARTICLE VI INDEMNIFICATION

6.1	Indemnification and Hold Harmless Agreement	10
6.2	Insurance	10
6.3	Enforcement Costs	10

**ARTICLE VII
MEDIATION**

7.1	Mandatory Non-binding Mediation	11
7.2	Mandatory Mediation Costs	11
7.3	Selection of Mediator	11
7.4	Conduct of Mediation Sessions.....	11

**ARTICLE VII
MISCELLANEOUS**

8.1	Headings	12
8.2	Independent Contractors.....	12
8.3	Compliance with Controlling Law	12
8.4	Jurisdiction and Venue	12
8.5	Conflicts Between Terms	12
8.6	Notices	12
8.7	Exhibits Incorporated.....	12
8.8	Integration	13
8.9	Ownership of Documents	13
8.10	Additional Consultants or Contractors	13
8.11	Employment of City Staff	13
8.12	Project Site Safety	13
8.13	Equal Benefits Ordinance	13
8.14	Public Records.....	13
8.15	Contractor Standards	14
8.16	Equal Pay Ordinance.....	14

NON-DESIGN CONSULTANT SHORT FORM AGREEMENT
EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - Determination Form
- Exhibit E - Contractor Standards Pledge of Compliance

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND «CONSULTANT_NAME»
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and «Consultant_Name» [Consultant] for the Consultant to provide Services to the City on «Project_Title» [Project].

**ARTICLE I
CONSULTANT SERVICES**

1.1 Scope of Services. The Consultant shall perform the Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City.

1.2 Competitive Bidding. Any plans, specifications, studies, or reports required by the Scope of Services must allow for competitive bidding. The Consultant shall prepare such plans, specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans, specifications, studies, or reports. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

**ARTICLE II
DURATION OF AGREEMENT**

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or «Completion_Date»; whichever is the earliest but not to exceed five years unless approved by City ordinance. Articles VI and VII shall survive the expiration or termination of this Agreement and continue so long as a viable claim exists.

2.2 Time of Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services is set forth in the Time Schedule [Exhibit C]. Liquidated damages may apply to late performance of the Scope of Services, as set forth in the Compensation and Fee Schedule [Exhibit B].

2.3 City's Right to Terminate for Convenience. The City may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Services shall be effective upon receipt of the notice by the Consultant.

The Consultant shall be entitled to fair and reasonable compensation for the Professional Services performed by the Consultant before the effective date of termination.

2.4 City's Right to Terminate for Default. If the Consultant fails to satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III COMPENSATION

3.1 Amount of Compensation. The City shall pay the Consultant for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, a total contract amount not exceeding <<Total_Amt_Scope_of_Services_and_Addition>>. The compensation for the Scope of Services shall not exceed <<Max_Scope_of_Services_Amount>>, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed <<Max_Additional_Services_Amount>>. The amount of compensation may be reduced by liquidated damages, as set forth in Exhibit B.

3.2 Additional Services. The City may require that the Consultant perform additional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule. The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.3.

3.3 Manner of Payment. The City shall pay the Consultant in accordance with the Compensation and Fee Schedule. For the duration of this Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Consultant shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

3.4 Eighty Percent Notification. The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater than the maximum compensation for this Agreement.

ARTICLE IV CONSULTANT'S OBLIGATIONS

4.1 Industry Standards. The Consultant agrees that the Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent <<Service_Type>> firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Maintenance of Records. The Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of the Services for the Project, throughout the performance of the Services and for a period of ten years following completion of the Services for the Project. The Consultant further agrees to allow the City to inspect, copy, and audit such books, records, documents and other evidence at all reasonable times.

4.3 Insurance. The Consultant shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates and endorsements reflecting evidence of all insurance required in Article IV, Section 4.3.1; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required by Article IV, Section 4.3.3; and (c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4 of this Agreement. However, failure to obtain the required documents prior to the Professional Services commencing shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance. At all times during the term of this Agreement, the Consultant shall maintain insurance coverage as follows:

4.3.1.1 Commercial General Liability. The Consultant shall keep in full force and effect Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs.

insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

4.3.1.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto. If the Consultant does not possess owned automobiles then coverage for hired and non-owned automobiles shall be provided.

Commented [d2]: If no vehicles will be used in the course and scope of the project, then this requirement can be **reserved**. However, the scope of work (Exhibit A) must state that, "No vehicle operations are permitted during the course and scope of this project and the work product must be transmitted electronically or by courier." The City's Construction Management & Field Services Division will have City forces conduct any required site inspections.

4.3.1.3 Workers' Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.1.4 RESERVED

4.3.1.5 Aircraft Liability. Consultant shall procure and maintain or cause to maintain and verify that its subconsultant procure and maintain Aircraft Liability insurance to cover aviation operations related to this Agreement in an amount not less than \$1 million combined single limit for bodily injury and property damage.

4.3.2 Deductibles.

All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.

4.3.3 Acceptability of Insurers.

4.3.3.1 Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

4.3.3.2 The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4.3.4 Required Endorsements

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

4.3.4.1 Commercial General Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Consultant's insurance and shall not contribute to it.

4.3.4.2 Worker's Compensation and Employer's Liability Insurance Endorsements

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

4.3.4.3 Aircraft Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Aircraft Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Consultant's insurance and shall not contribute to it.

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the Consultant's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Consultant for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

4.3.6 Additional Insurance. The Consultant may obtain additional insurance not required by this Agreement.

4.3.7 Excess Insurance. All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

4.4 Drug-Free Workplace. By signing this Agreement the Consultant agrees that it is aware of, and hereby certifies that it agrees to comply with, the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. Council Policy 100-17 is available on line at <https://www.sandiego.gov/city-clerk/officialdocs>.

4.5 Non-Discrimination Requirements.

4.5.1 Compliance with the City's Equal Opportunity Contracting Program. The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subcontractors.

4.5.2 Non-Discrimination Ordinance. The Consultant shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Consultant shall provide equal opportunity for Subcontractors to participate in subcontractor opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Consultant and any Subcontractors, vendors and suppliers.

4.5.3 Compliance Investigations. Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.5.4 ADA Certification. By signing this Agreement the Consultant agrees that it is aware of, and hereby certifies that it agrees to comply with, the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-

04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference. Council Policy 100-04 is available at <https://www.sandiego.gov/city-clerk/officialdocs>.

4.6 Conflict of Interest. The Consultant is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.6.1 If, in performing the Professional Services set forth in this Agreement, any member of the Consultant's organization makes, or participates in, a "governmental decision" as described in Title 2, section 18704 of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the individual shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the individual's relevant financial interests. The determination as to whether any individual members of the Consultant's organization must make disclosures of relevant financial interests is set forth in the Determination Form [Exhibit D].

4.6.1.1 If a determination is made that certain individuals must disclose relevant financial interests, the statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The individual shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the individuals are subject to a conflict of interest code. Each year thereafter, the individuals shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the individual was subject to a conflict of interest code. A Form 700 (Leaving Office Statement) shall also be filed when the individual discontinues services under this Agreement.

4.6.1.2 If the City requires an individual member of the Consultant's organization to file a statement of economic interests as a result of the Professional Services performed, the individual shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.7 Prevailing Wage Rates. Prevailing wage rates apply to this Agreement.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the Consultant and its subconsultants shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

4.7.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the Consultant and its subconsultants shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and

preconstruction phases of construction including, but not limited to, inspection and land surveying work.

4.7.1.1 Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The Consultant and its subconsultants shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

4.7.1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

4.7.2 Penalties for Violations. Consultant and its subconsultants shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

4.7.3 Payroll Records. Consultant and its subconsultants shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Consultant shall require its subconsultants to also comply with section 1776. Consultant and its subconsultants shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Consultant is responsible for ensuring its subconsultants submit certified payroll records to the City.

4.7.3.1 In addition to the requirements in 4.7.3, the Consultant and its subconsultants shall also furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

4.7.4 Apprentices. Consultant and its subconsultants shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Consultant shall be held responsible for the compliance of their subconsultants with sections 1777.5, 1777.6 and 1777.7.

4.7.5 Working Hours. Consultant and its subconsultants shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight (8) hours a day and forty (40) hours a week, unless all hours worked in excess of eight (8) hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than eight (8) hours per day and forty (40) hours per week in violation of California Labor Code sections 1810 through 1815.

4.7.6 Required Provisions for Subcontracts. Consultant shall include at a minimum a copy of the following provisions in any contract they enter into with a subconsultant: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

4.7.7 Labor Code Section 1861 Certification. Consultant in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Consultant certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

4.7.8 Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred.

4.7.9 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A Consultant or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

4.7.9.1 A Consultant's inadvertent error in listing a subconsultant who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-responsive provided that any of the following apply: (1) the subconsultant is registered prior to proposal due date; (2) within twenty-four hours after the proposal due date, the subconsultant is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subconsultant is replaced by another registered subconsultant pursuant to Public Contract Code section 4107.

4.7.9.2 By submitting a bid or proposal to the City, Consultant is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Consultant shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

4.7.10 Stop Order. For Consultant or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Consultant or unregistered subcontractor(s) on ALL public works until the unregistered Consultant or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

4.7.11. List of all Subcontractors. The Consultant shall provide a complete list of subcontractors (regardless of tier) utilized on this Agreement, along with their DIR

registration numbers, if applicable, prior to any work being performed on this Agreement, and Consultant shall provide a complete list of subcontractors, regardless of tier, with each invoice. Additionally, Consultant shall provide the City with a complete list of all subcontractors utilized on this Agreement, regardless of tier, within ten working days of the completion of the Agreement, along with their DIR registration numbers, if applicable. The City shall withhold final payment to Consultant until at least thirty (30) days after this information is provided to the City.

4.7.12 Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Consultant shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

4.7.12.1 Registration. The Consultant will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

4.7.12.2 Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Consultant will need to keep those records for at least three years following the completion of the Agreement. (Labor Code section 1771.4).

4.7.12.3 List of all Subcontractors. The Consultant shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 4.7.11 above. (Labor Code section 1773.3).

ARTICLE V RESERVED

ARTICLE VI INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed under this Agreement, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active or sole negligence or sole willful misconduct of the City, its agents, officers or employees.

6.2 Insurance. The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

6.3 Enforcement Costs. The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

ARTICLE VII

MEDIATION

7.1 Mandatory Non-binding Mediation. If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 Selection of Mediator. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

7.3.1 If AAA is selected to coordinate the mediation, within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

7.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII MISCELLANEOUS

8.1 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

8.2 Independent Contractors. The Consultant and any Subcontractors employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

8.3 Compliance with Controlling Law. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

8.4 Jurisdiction and Venue. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be the County of San Diego, State of California.

8.5 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

8.6 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: : <<Department>>, c/o <<Project_Manager>>, MS <<PM_Mail_Station>>, <<Department_Address>> and notice to the Consultant shall be addressed to: <<Consultant_Name>>, <<Consultant_Contact_Person>>, <<Consultant_Address>>, <<Contact_Email>>.

8.7 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

8.8 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

8.9 Ownership of Documents. Once the Consultant has received any compensation for the Services performed under this Agreement, all documents, including but not limited to, original plans, maps, studies, sketches, drawings, computer printouts and electronic files, and specifications prepared in connection with or related to the Scope of Services or Services, shall be the property of the City.

8.10 Additional Consultants or Contractors. The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide the Services on the Project.

8.11 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the Consultant.

8.12 Project Site Safety. Unless otherwise provided by the Scope of Services in this Agreement, the Consultant, Subconsultant and their employees are not responsible for general Project site conditions during the course of construction of the Project. The City acknowledges that the construction contractor has primary responsibility for Project site conditions, including safety of all persons and property. This provision shall not be interpreted to in any way relieve the Consultant, Subconsultants or their employees of their obligation under Section 4.1 of this Agreement to comply with all applicable laws, codes and good consulting practices with regard to the maintenance of a safe Project site.

8.13 Equal Benefits Ordinance. Unless an exception applies, Consultant shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (§22.4304(f)). Failure to maintain equal benefits is a material breach of this Agreement. By signing this Agreement, Consultant certifies that Consultant is aware of, and will comply with, this City-mandated clause throughout the duration of the Agreement.

8.14 Public Records. By Signing this Agreement the Consultant agrees that it is aware that the contents of this Agreement and any documents pertaining to the performance of the Agreement requirements/Scope of Services resulting from this Agreement are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If the Consultant submits information **clearly marked** confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Consultant** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Consultant must provide a **specific and detailed legal basis, including applicable case law that clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Consultant does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Consultant will hold the City harmless** for release of this information.

It will be the **Consultant's obligation to defend**, at Consultant's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Consultant's request. Furthermore, the Consultant shall **indemnify** the City and **hold it harmless** for any claim or liability, and **defend any action** brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Consultant's request.

Nothing in this Agreement creates any obligation for the City to notify the Consultant or obtain the Consultant's approval or consent before releasing information subject to disclosure under the California Public Records Act.

8.15 Contractor Standards. This Agreement is subject to the Contractor Standards clause of the Municipal Code Chapter 2, Article 2, Division 30 adopted by Ordinance No. O-20316. All consultants are required to complete the Contractor Standards Pledge of Compliance included herein as Exhibit E.

8.16 Equal Pay Ordinance. Unless an exception applies, Consultant shall comply with the Equal Pay Ordinance (EPO) codified in the San Diego Municipal Code (SDMC) at section 22.4801 through 22.4809. Consultant shall require all of its subconsultants to certify compliance with the EPO in their written subcontracts. Consultant must post a notice informing its employees of their rights under the EPO in their workplace or job site. By signing this Agreement with the City of San Diego, Consultant acknowledges the EPO requirements and pledges ongoing compliance with the requirements of SDMC Division 48, section 22.4801 et seq., throughout the duration of this Agreement.

The remainder of this page has been intentionally left blank

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to <<Appropriate_Legal_Authority>>, authorizing such execution, and by the Consultant pursuant to <<Relevant_Legal_Document>>.

I HEREBY CERTIFY I can legally bind <<Consultant_Name>> and that I have read all of this Agreement, this _____ day of _____, _____.

By _____
<<Consultant_Principal_Name>>
<<Consultant_Principal_Title>>

Dated this _____ day of _____, _____.

THE CITY OF SAN DIEGO
Mayor or Designee

By _____

I HEREBY APPROVE the form of the foregoing Agreement this _____ day of _____, _____.

MARA W. ELLIOTT, City Attorney

By _____
Deputy City Attorney

**NON-DESIGN CONSULTANT SHORT FORM
AGREEMENT EXHIBITS**

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

EXHIBIT C

TIME SCHEDULE

**INSTRUCTION SHEET FOR
DISCLOSURE DETERMINATION FOR CONSULTANT
(Form CC-1671)**

Use the "Disclosure Determination for Consultant" form (CC-1671) to report the disclosure requirement for any consultant hired to provide services to the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction.

2 California Code of Regulations defines a "consultant" as an individual who, pursuant to a contract with a state or local government agency, either makes a governmental decision or serves in a staff capacity with the state or local government agency and in that capacity participates in making a governmental decision.

The "Disclosure Determination for Consultant" form is completed for all consultants under contract with the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction. Please follow the step-by-step directions:

1. List the department, board, commission or agency requesting the consultant service.
2. List the consulting company. If known, also list the individual(s) who will be providing the consultant services.
3. List the mailing address.
4. List the e-mail address of individual(s) providing the consultant service.
5. Provide the date the individual(s) will start providing the consultant service.
6. List all duties/responsibilities the consultant will have. This list will enable you to determine the disclosure requirement for the consultant.
7. Determine the consultant's disclosure category. Your consultant should be required to disclose only those economic interests which could potentially create a conflict of interest as he/she performs his/her contractual obligations. For ideas about possible disclosure categories, review those in your department's, board's, commission's or agency's conflict of interest code, available at:

www.sandiego.gov/city-clerk/elections/eid/codes.shtml

Please fill out the entire "Disclosure Determination for Consultant" form, and have it signed by the appropriate authority. (Individuals with signing authority are described in your conflict of interest code as part of the disclosure requirement for Consultants.) Forward the original form to the City Clerk's Office, MS 2A.

EXHIBIT D`

DISCLOSURE DETERMINATION FOR CONSULTANT

**Must be signed by department director, agency president or other individual authorized by the appropriate conflict of interest code regarding consultants.*

1. Department / Board / Commission / Agency Name: _____
2. Name of Specific Consultant & Company: _____
3. Address, City, State, ZIP _____
4. Project Title (as shown on 1472, "Request for Council Action") _____

5. Consultant Duties for Project: _____

6. Disclosure Determination [select applicable disclosure requirement]:

☐ Consultant will not be "making a governmental decision" or "serving in a staff capacity." No disclosure required.

- or -

☐ Consultant will be "making a governmental decision" or "serving in a staff capacity." Consultant is required to file a Statement of Economic Interests with the City Clerk of the City of San Diego in a timely manner as required by law. [Select consultant's disclosure category.]

☐ Full: Disclosure is required pursuant to the broadest disclosure category in the appropriate Conflict of Interest Code.

- or -

☐ Limited: Disclosure is required to a limited extent. [List the specific economic interests the consultant is required to disclose.]

By: _____
[Name/Title]*

[Date]

EXHIBIT D`

Once completed, with all questions answered and an authorized signature affixed, please forward the original form to the City Clerk's Office, MS 2A. Keep a copy with the contract.

DEFINITION OF "CONSULTANT"

2 California Code of Regulations defines a "consultant" as an individual who, pursuant to a contract with a state or local government agency:

- (A) Makes a governmental decision whether to:
 - 1. Approve a rate, rule or regulation;
 - 2. Adopt or enforce a law;
 - 3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - 4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
 - 5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
 - 6. Grant City approval to a plan, design, report, study, or similar item;
 - 7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or
- (B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

An individual "serves in a staff capacity" if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City's conflict of interest code.

An individual "participates in making a governmental decision" if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.

**City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance**

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Contractor Standards Pledge of Compliance (Pledge of Compliance) signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment "A" to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

**A. BID/PROPOSER/SOLICITATION
TITLE:**

**B. BIDDER PROPOSER
INFORMATION**

Legal Name		DBA	
Street Address	City	State	Zip
Contact Person, Title	Phone	Fax	

Provide the name, identity, and precise nature of the interest* of all persons who are directly or indirectly involved** in this proposed transaction (SDMC § 21.0103). Use additional pages if necessary.

* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

** Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,

EXHIBIT E

- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Use Attachment "A" if additional pages are necessary.

C. OWNERSHIP AND NAME CHANGES:

1. In the past five (5) years, has your firm changed its name?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

D. BUSINESS ORGANIZATION/STRUCTURE:

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment "A" if more space is required.

☐ **Corporation**

Date incorporated: ____/____/____ State of incorporation: _____

List corporation's current officers:

President:

Vice Pres.:

Secretary:

Treasurer:

Is your firm a publicly traded corporation? ☐ **Yes** ☐ **No**

If **Yes**, name those who own ten percent (10%) or more of the corporation's stocks:

☐ **Limited Liability Company**

Date formed: ____/____/____ State of formation: _____

List names of members who own ten percent (10%) or more of the company:

EXHIBIT E

☐ **Partnership**

Date formed: ____/____/____

State of formation: _____

List names of all firm partners:

☐ **Sole Proprietorship** Date started: ____/____/____

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

☐ **Joint Venture** Date formed: ____/____/____

List each firm in the joint venture and its percentage of ownership:

Note: To be responsive, each member of a Joint Venture must complete a separate Pledge of Compliance.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

EXHIBIT E

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

5. Within the last five (5) years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: _____

Point of Contact: _____

Address: _____

Phone Number: _____

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

☐ **Yes** ☐ **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

EXHIBIT E

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name:

Contact Name and Phone Number:

Contact Email:

Address:

Contract Date:

Contract Amount:

Requirements of Contract:

Company Name:

Contact Name and Phone Number:

Contact Email:

Address:

Contract Date:

Contract Amount:

Requirements of Contract:

EXHIBIT E

Company Name:

Contact Name and Phone Number:

Contact Email:

Address:

Contract Date:

Contract Amount:

Requirements of Contract:

G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

EXHIBIT E

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

I. WAGE COMPLIANCE:

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws?

☐ Yes ☐ No

If **Yes**, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

J. STATEMENT OF SUBCONTRACTORS:

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please check here ☐ Not Applicable.

Company Name:

Contact Name and Phone Number:

Contact Email:

Address:

Contract Date:

Sub-Contract Dollar Amount:

Requirements of Contract:

What portion of work will be assigned to this subcontractor:

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Check One) **Yes** ☐ **No** ☐

If **Yes**, Contractor must provide valid proof of certification with the response to the bid or proposal.

K. STATEMENT OF AVAILABLE EQUIPMENT:

List all necessary equipment to complete the work specified using Attachment "A". In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not

EXHIBIT E

demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please check here ☐ Not Applicable.

L. TYPE OF SUBMISSION: This document is submitted as:

☐ Pledge of Compliance Initial submission.

OR

☐ Update to prior Pledge of Compliance dated ____/____/____

Complete all questions and sign below.

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance requires an updated response. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

(a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

(b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).

(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(e) I and my firm will cooperate fully with the City during any investigation and agree to respond to a request for information within ten (10) working days.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted.

Name and Title

Signature

Date

EXHIBIT E

**City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance Attachment "A"**

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

If not using this Attachment "A", please check here ☐ Not Applicable.

I have read the matters and statements made in this Pledge of Compliance and Attachment "A"(s) there to and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Print Name, Title

Signature

Date